

ESTTA Tracking number: **ESTTA542107**

Filing date: **06/06/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204122
Party	Plaintiff Empire State Building Company L.L.C.
Correspondence Address	MAYA L TARR COWAN LIEBOWITZ LATMAN PC 1133 AVENUE OF THE AMERICAS NEW YORK, NY 10036 UNITED STATES mxt@cll.com, wmb@cll.com, trademark@cll.com, fxm@cll.com, mlk@cll.com
Submission	Motion to Compel Discovery
Filer's Name	Maya L. Tarr
Filer's e-mail	mxt@cll.com, fxm@cll.com, trademark@cll.com, mlk@cll.com
Signature	/Maya L. Tarr/
Date	06/06/2013
Attachments	NYC BEER Motion to Compel.pdf(100681 bytes) NYC BEER Borchard Declaration.pdf(1267526 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. 85/213,453
Filed: January 8, 2011
For Mark: NYC BEER LAGER and Design
Published in the Official Gazette: December 6, 2011

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EMPIRE STATE BUILDING COMPANY L.L.C.,	:	Opposition No. 91204122
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Opposer,	:	
	:	
v.	:	
	:	
MICHAEL LIANG,	:	
	:	
Applicant.	:	
-----X		

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

OPPOSER'S MOTIONS TO COMPEL AND TO SUSPEND

Upon the annexed Declaration of William M. Borchard and the exhibits thereto, Opposer hereby moves for an order pursuant to 37 C.F.R. §2.120(e), T.B.M.P. § 523 and Fed. R. Civ. P. 37(a), compelling Applicant to respond to Opposer's First Set of Interrogatories and Request for Production of Documents and Things. As grounds for the motion to compel, Opposer states that Applicant has failed to respond to Opposer's discovery requests despite follow-up efforts by Opposer to obtain such responses.

Pursuant to 37 C.F.R. § 2.120(e), and in light of the scheduled deadline for serving Opposer's pretrial disclosures by July 1, 2013, Opposer also requests that this matter be suspended and that the pretrial disclosure, trial and other periods be reset once the Board decides this motion.

MEMORANDUM IN SUPPORT OF MOTIONS

STATEMENT OF FACTS

The facts on which this motion is based are set forth fully in the accompanying declaration of William M. Borchard (“Borchard Decl.”) and are summarized briefly here for the Board’s convenience.

Opposer initiated this proceeding by filing a Notice of Opposition on March 1, 2012, against Application Serial No. 85/213,453 filed by Michael Liang (“Applicant”) seeking to register the mark NYC BEER LAGER and Design shown below:



(“Applicant’s Mark”) for “Alcohol-free beers; Beer; Beer, ale and lager; Beer, ale and porter; Beer, ale, lager, stout and porter; Beer, ale, lager, stout, porter, shandy; Beers; Black beer; Brewed malt-based alcoholic beverage in the nature of a beer; Coffee-flavored beer; De-alcoholised beer; Extracts of hops for making beer; Flavored beers; Ginger beer; Hop extracts for manufacturing beer; Imitation beer; Malt beer; Malt extracts for making beer; Malt liquor; Non-alcoholic beer; Pale beer; Porter” in International Class 32. Borchard Decl. ¶ 1. The Notice of Opposition alleged that registration of Applicant’s Mark was likely to result in confusion, falsely suggest a connection between Applicant and Opposer, and/or cause a likelihood of dilution by blurring of the distinctive quality of Opposer’s Empire State Building Marks, as defined in Paragraph 1 of the Notice of Opposition. Borchard Decl. ¶ 2.

On September 19, 2012, the parties filed a consented Motion to Waive Initial Disclosures, which was noted by the Board on October 10, 2012. Borchard Decl. ¶ 3 and Ex. A.

Thereafter, on February 19, 2013, Opposer served Applicant with Opposer's First Set of Interrogatories and Request for Production of Documents and Things ("Opposer's Discovery Requests")¹ by First Class Mail. Borchard Decl. ¶ 4 and Ex. B. Applicant's responses were due on March 26, 2013. Id.

On March 19, 2013, Applicant's counsel called Opposer's counsel to request an extension of Applicant's deadline to respond to Opposer's Discovery Requests. Borchard Decl. ¶ 5. Opposer's counsel and Applicant's counsel had a brief telephone conversation, but Applicant's counsel had to go before they finished their conversation. Id. After being unable to reach Applicant's counsel again by phone, Opposer's counsel sent Applicant's counsel an email on March 21, 2013 indicating that Opposer would consent to a 60 day extension of Applicant's deadline to respond to Opposer's Discovery Requests on condition that all other dates would be extended for 90 days and putting forth a settlement proposal. Borchard Decl. ¶ 6 and Ex. C (redacting confidential settlement matter).

On March 26, 2013, after not receiving a response from Applicant's counsel, Opposer's counsel sent an email to Applicant's counsel indicating that in light of the fact that Applicant's counsel had not responded to Opposer's counsel's March 21, 2013 email, Opposer's counsel believed that Applicant's counsel had accepted Opposer's consent to a 60 day extension of Applicant's deadline to respond to Opposer's Discovery Requests on condition that all other dates are extended for 90 days, and that Opposer's counsel would prepare a motion to consent to

¹ This Motion does not address Opposer's simultaneously-served First Set of Requests for Admission because Applicant also failed to respond to those requests and they are thus deemed admitted.

extend the deadlines if he did not hear otherwise from Applicant's counsel. Borchard Decl. ¶ 7 and Ex. D.

On March 27, 2013, Opposer's counsel prepared and filed a Motion for an Extension of Answer or Discovery or Trial Periods With Consent to extend Applicant's deadline to respond to Opposer's Discovery Requests by 60 days and to extend all other dates by 90 days, which was granted the same day. Borchard Decl. ¶ 8 and Ex. E.

On the morning of June 3, 2013, having not yet received Applicant's responses to Opposer's Discovery Requests which were due by the extended deadline of May 25, 2013, Opposer's counsel called and left a message for Applicant's counsel requesting that Applicant's counsel contact Opposer's counsel. Borchard Decl. ¶ 9. Later on June 3, 2013, having still not heard anything from Applicant's counsel, Opposer's counsel emailed Applicant's counsel advising that, if he did not hear from him by Wednesday, June 5, 2013 by 5:00 p.m, he would need to make a motion to compel Applicant's responses to Opposer's Discovery Requests. Borchard Decl. ¶ 10 and Ex. F.

To date, Applicant has not provided responses to Opposer's Discovery Requests, nor has Applicant's counsel otherwise acknowledged Opposer's counsel June 3, 2013 message and email, leaving Opposer with no choice but to make this motion to compel. Borchard Decl. ¶ 11.

ARGUMENT

OPPOSER'S MOTION TO COMPEL SHOULD BE GRANTED

A motion to compel should be granted where, as here, after a movant has made a good faith effort to resolve the matter, a party refuses to provide timely discovery responses, including interrogatory responses and documents and things. 37 C.F.R. §2.120(e); TBMP 523; Envirotech Corp. v. Compagnie Des Lampes, 219 U.S.P.Q. 448 (T.T.A.B. 1979); General Sealer Corp. v. H.H. Robertson Co., 193 U.S.P.Q. 384 (T.T.A.B. 1976). An order compelling Applicant to

respond to discovery is plainly warranted here. As mentioned above and set forth more fully below, Applicant has not served any responses to Opposer's Discovery Requests, nor has Applicant addressed Opposer's Discovery Requests.

Opposer is entitled to responses to its discovery requests in order to pursue this opposition and submit appropriate evidence in support of its claims. As set forth above and in the attached Declaration of William M. Borchard, before filing this motion, Opposer, by its attorneys, made a good faith effort to resolve these issues. Nevertheless, Applicant has failed to produce responses to Opposer's Discovery Requests, leaving Opposer no choice but to seek the Board's assistance in compelling Applicant's response.

For the foregoing reasons, Opposer respectfully requests that the Board issue an order compelling Applicant to respond to Opposer's Discovery Requests. Opposer further requests that this matter be suspended and that the pretrial disclosures, trial and other periods be reset once the Board decides this motion.

Dated: New York, New York
June 6, 2013

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: /Maya L. Tarr/
William M. Borchard
Mary L. Kevlin
Maya L. Tarr

1133 Avenue of the Americas
New York, New York 10036
(212) 790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on June 6, 2013, I caused a true and correct copy of the foregoing Opposer's Motions to Compel and to Suspend and supporting Declaration of William M. Borchard to be sent via First Class Mail, postage prepaid, to Applicant's Attorney of Record, David Yan, Esq., Law Offices of David Yan, 136-20 38th Avenue, Suite 11E, Flushing, New York 11354-4232.

/Maya L. Tarr/

Maya L. Tarr

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. 85/213,453
Filed: January 8, 2011
For Mark: NYC BEER LAGER and Design
Published in the Official Gazette: December 6, 2011

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EMPIRE STATE BUILDING COMPANY L.L.C.,	:
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Opposer,	:
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v.	:
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MICHAEL LIANG,	:
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Applicant.	:
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Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Opposition No. 91204122

**DECLARATION OF WILLIAM M. BORCHARD IN SUPPORT OF
OPPOSER'S MOTION TO COMPEL**

WILLIAM M. BORCHARD, pursuant to 28 U.S.C. §1746, declares:

1. I am an attorney with Cowan, Liebowitz & Latman, P.C., attorneys for Opposer.

I submit this declaration in support of Opposer's Motion to Compel Applicant to respond to Opposer's First Set of Interrogatories and Request for Production of Documents and Things.

Opposer initiated this proceeding by filing a Notice of Opposition on March 1, 2012, against Application Serial No. 85/213,453 filed by Michael Liang ("Applicant") seeking to register the mark NYC BEER LAGER and Design shown below:



("Applicant's Mark") for "Alcohol-free beers; Beer; Beer, ale and lager; Beer, ale and porter; Beer, ale, lager, stout and porter; Beer, ale, lager, stout, porter, shandy; Beers; Black beer; Brewed malt-based alcoholic beverage in the nature of a beer; Coffee-flavored beer; De-alcoholised beer; Extracts of hops for making beer; Flavored beers; Ginger beer; Hop extracts for manufacturing beer; Imitation beer; Malt beer; Malt extracts for making beer; Malt liquor; Non-alcoholic beer; Pale beer; Porter" in International Class 32.

2. The Notice of Opposition alleged that registration of Applicant's Mark was likely to result in confusion, falsely suggest a connection between Applicant and Opposer, and/or cause a likelihood of dilution by blurring of the distinctive quality of Opposer's Empire State Building Marks, as defined in Paragraph 1 of the Notice of Opposition.

3. On September 19, 2012, the parties filed a consented Motion to Waive Initial Disclosures, which was noted by the Board on October 10, 2012. True and complete copies of Opposer's Notice of Waiver of Initial Disclosures and the Board's order noting the waiving of initial disclosures are attached hereto as Composite Exhibit A.

4. On February 19, 2013, Opposer served Applicant with Opposer's First Set of Interrogatories and Request for Production of Documents and Things ("Opposer's Discovery

Requests”) by First Class Mail¹. A true and complete copy of Opposer’s Discovery Requests are attached hereto as Exhibit B. Applicant’s responses were due on March 26, 2013.

5. On March 19, 2013, Applicant’s counsel called me to request an extension of Applicant’s deadline to respond to Opposer’s Discovery Requests. I had a brief telephone conversation with Applicant’s counsel, but Applicant’s counsel had to go before we finished our conversation.

6. After being unable to reach Applicant’s counsel again by phone, I sent Applicant’s counsel an email on March 21, 2013 indicating that Opposer would consent to a 60 day extension of Applicant’s deadline to respond to Opposer’s Discovery Requests on condition that all other dates would be extended for 90 days and putting forth a settlement proposal. A true and complete copy of that email is attached hereto as Exhibit C.

7. On March 26, 2013, after not receiving a response from Applicant’s counsel, I sent an email to Applicant’s counsel indicating that in light of the fact that Applicant’s counsel had not responded to my March 21, 2013 email, I believed that Applicant’s counsel had accepted Opposer’s consent to a 60 day extension of Applicant’s deadline to respond to Opposer’s Discovery Requests on condition that all other dates are extended for 90 days, and that I would prepare a motion to consent to extend the deadlines if I did not hear otherwise from Applicant’s counsel. A true and complete copy of that email is attached hereto as Exhibit D.

8. On March 27, 2013, my colleague Maya L. Tarr prepared and filed a Motion for an Extension of Answer or Discovery or Trial Periods With Consent to extend Applicant’s deadline to respond to Opposer’s Discovery Requests by 60 days and to extend all other dates by 90 days, which was granted the same day. A true and complete copy of the Motion for an

¹ Opposer also served Requests to Admit on the same date. Applicant also did not response to these, which accordingly are deemed admitted and thus are not part of this motion.

Extension of Answer or Discovery or Trial Periods With Consent to extend Applicant's deadline to respond to Opposer's Discovery Requests and the Board's order granting the motion are attached as Composite Exhibit E.

9. On the morning of June 3, 2013, having not yet received Applicant's responses to Opposer's Discovery Requests which were due by the extended deadline of May 25, 2013, I called and left a message for Applicant's counsel requesting that Applicant's counsel contact me.

10. Later on June 3, 2013, having still not heard anything from Applicant's counsel, I emailed Applicant's counsel advising that, if I did not hear from him by Wednesday, June 5, 2013 by 5:00 p.m, I would need to make a motion to compel Applicant's responses to Opposer's Discovery Requests. A true and complete copy of that email is attached hereto as Exhibit F.

11. To date, Applicant has not provided responses to Opposer's Discovery Requests, nor has Applicant's counsel otherwise acknowledged my June 3, 2013 message and email, leaving Opposer with no choice but to make this motion to compel.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT, EXECUTED ON JUNE 6, 2013 AT NEW YORK, NEW YORK.


WILLIAM M. BORCHARD

COMPOSITE EXHIBIT A

ESTTA Tracking number: **ESTTA495217**

Filing date: **09/19/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204122
Party	Plaintiff Empire State Building Company L.L.C.
Correspondence Address	MAYA L TARR COWAN LIEBOWITZ LATMAN PC 1133 AVENUE OF THE AMERICAS NEW YORK, NY 10036 UNITED STATES trademark@cll.com, wmb@ccl.com, mxt@ccl.com
Submission	Other Motions/Papers
Filer's Name	Maya L. Tarr
Filer's e-mail	mxt@ccl.com, trademark@ccl.com, wmb@ccl.com
Signature	/Maya L. Tarr/
Date	09/19/2012
Attachments	Notice of Waiver of Initial Disclosures.pdf (2 pages)(10199 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. 85/213,453
Filed: January 8, 2011
For Mark: NYC BEER LAGER and Design
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Opposer,	:
	:
v.	:
	:
MICHAEL LIANG,	:
	:
Applicant.	:
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Opposition No. 91204122

NOTICE OF WAIVER OF INITIAL DISCLOSURES

The parties having conducted their mandatory discovery conference, and both sides having stipulated to waive the requirement of initial disclosures, Opposer hereby notifies the Board, with the consent of Applicant, that the parties intend to utilize traditional discovery devices and hereby waive any requirement to make initial disclosures in this proceeding.

Dated: New York, New York
September 19, 2012

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: /Maya L. Tarr/
William M. Borchard
Mary L. Kevlin
Maya L. Tarr

1133 Avenue of the Americas
New York, New York 10036
(212) 790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on September 19, 2012, I caused a true and correct copy of the foregoing Notice of Waiver of Initial Disclosures to be served via First Class Mail, postage prepaid, to Applicant's Attorney of Record, David Yan, Esq., Law Offices of David Yan, 136-20 38th Avenue, Suite 11E, Flushing, New York 11354-4232.

/Maya L. Tarr/
Maya L. Tarr

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

AM

Mailed: October 10, 2012

Opposition No. 91204122

Empire State Building Company
L.L.C.

v.

Michael Liang

**M. Catherine Faint,
Interlocutory Attorney:**

Opposer's notice to waive the requirement of initial disclosures, with applicant's consent, filed September 19, 2012 is noted.

Trial dates remain as set as indicated in the Board's order dated June 26, 2012 and copied below.

Expert Disclosures Due	1/17/2013
Discovery Closes	2/16/2013
Plaintiff's Pretrial Disclosures	4/2/2013
Plaintiff's 30-day Trial Period Ends	5/17/2013
Defendant's Pretrial Disclosures	6/1/2013
Defendant's 30-day Trial Period Ends	7/16/2013
Plaintiff's Rebuttal Disclosures	7/31/2013
Plaintiff's 15-day Rebuttal Period Ends	8/30/2013

Opposition No. 91204122

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

EXHIBIT B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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In re Application Serial No. 85/213,453
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Opposer,	:
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v.	:
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MICHAEL LIANG,	:
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Applicant.	:
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Opposition No. 91204122

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**OPPOSER'S FIRST SET OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Opposer Empire State Building Company L.L.C. ("Opposer") requests that Applicant Michael Liang ("Applicant") answer under oath the following interrogatories and produce the following documents and things for inspection and copying at the offices of Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036 within 30 days after service hereof. These requests are deemed to be continuing, so as to require prompt production of additional documents and supplemental interrogatory answers should Applicant obtain

additional responsive information or documents between the time the answers are served and the time of the final hearing of this opposition proceeding.

DEFINITIONS AND INSTRUCTIONS

A. The term “Applicant” means Michael Liang, and any entities or businesses which he owns or controls, any persons, businesses or entities with which he is directly connected, and all employees, agents and/or representatives thereof.

B. The term “Opposer” means Opposer Empire State Building Company L.L.C., and all parent, subsidiary, related, predecessor and/or successor entities, divisions, employees, agents and/or representatives thereof.

C. The term “Opposer’s Empire State Building Marks” shall refer to marks used, registered and/or applied to be registered by Opposer consisting of or incorporating the words EMPIRE STATE or EMPIRE STATE BUILDING, and various marks depicting the visual equivalent of the world-renowned Empire State Building, which is located in New York City, including, but not limited to, the marks set forth in paragraphs 1 and 2 of the Notice of Opposition in this proceeding.

D. The term “Applicant’s Mark” shall refer to the mark NYC BEER LAGER and



Design as depicted here: , as applied-for in Application Serial No. 85/213,453 and any other marks used, registered and/or applied to be registered by Applicant consisting of or incorporating a building design similar to the design in Applicant’s Mark, alone or with other word, letter and/or design elements.

E. The term “commerce” means commerce subject to regulation by Congress, as defined in 15 U.S.C. §1127.

F. As used herein, the terms “entity” and “person” include natural persons, governmental entities, organizations, corporations, partnerships, associations, joint ventures and any other individual or group of individuals that has the purpose of conducting or, in fact, conducts business.

G. The term “document” shall be given the broadest possible scope under Fed. R. Civ. P. 34 and includes, but is not limited to, all writings, correspondence, memoranda, handwritten notes, drafts, invoices, contracts, purchase orders, letters, checks, receipts, books, pamphlets, flyers, advertisements, web pages, publications, stickers, posters, catalogs, labels, product packaging, product containers, displays, photographs, slides, videotapes, films, artwork, drawings, sketches, illustrative materials, layouts, tear sheets, magnetic recording tapes, microfilms, computer printouts, e-mail, work sheets, and files from any personal computer, notebook or laptop computer, file server, minicomputer, mainframe computer or any other storage means by which information is retained in retrievable form, including files that are still on any storage media, but that are identified as “erased but recoverable,” and all other materials, whether printed, typewritten, handwritten, recorded or reproduced by a mechanical or electronic process.

H. The term “identify” when used in connection with a natural person or persons requires Applicant to state the person’s full name and last known business and residential addresses, telephone number and e-mail address.

I. The term “identify” when used in connection with a document requires

Applicant to:

(i) Furnish the name or title, date and general description (e.g., letter, memorandum, etc.) of the document, the name and address of the person from whom the document originated, the name and address of the persons to whom the document was addressed or delivered, and the names and addresses of all persons to whom copies of the document were sent; and

(ii) State whether Applicant is in possession of the original of the document or a copy thereof and, if Applicant is not in possession of the original or a copy, furnish the name and address of the custodian of the original or a copy; and

(iii) Furnish a general description of the subject matter to which the document(s) pertains.

J. The term “identify” when used in connection with a company, organization or other business entity requires Applicant to state the name, address, and phone number of the company, organization or other business entity.

K. The term “concerning” means referring to, relating to, embodying, connected with, commenting on, responding to, showing, describing, analyzing or constituting.

L. The singular and plural forms are used herein interchangeably, as are the masculine and feminine forms and the present and past tenses, and such terms should be construed as necessary to bring within the scope of the interrogatory/document request all documents and information which might otherwise be construed to be outside its scope.

M. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatory/document request all documents and

information which might otherwise be construed to be outside its scope.

N. If any information or document called for in any interrogatory or request is withheld in whole or in part by reason of a claim of attorney-client privilege or any other claim of immunity from discovery, then, at the time the information or document is to be produced, a list is to be furnished identifying any such information or document withheld together with the following information: date and title of the document; name and job title of each author, writer or sender of the document; name and job title of each recipient, addressee or other person to whom the original or any copy of the document was sent or furnished; if Applicant contends that an author or recipient of the document is an attorney for purposes of claiming privilege or immunity from discovery, identify the State Bar of which he or she was a member at the time of the communication in question; the general subject matter of the information or document withheld; the basis for the claim of privilege or immunity from discovery; and the interrogatory or request to which the information or document is responsive.

O. In the event that any document called for by this request has been destroyed, lost, discarded or otherwise disposed of, identify any such document as completely as possible, including, without limitation, the date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.

P. Documents shall be produced as they are kept in the ordinary course of business or shall be organized and labeled to correspond to the document request to which they are responsive.

Q. To the extent the information or documents are sought concerning Applicant's use or intended use of Applicant's Mark, the interrogatories and requests are referring to use or

intended use in the United States or in commerce.

INTERROGATORIES

Interrogatory No. 1

State the date when Applicant first selected any mark comprising or containing Applicant's Mark for use or intended use in connection with any goods or services.

Interrogatory No. 2

Identify all persons who or entities that participated in or were consulted in the design, selection and/or adoption of any mark comprising or containing Applicant's Mark, including a description of the nature of each person's or entity's participation or consultation.

Interrogatory No. 3

Describe in detail the reason(s) for the selection of Applicant's Mark, including, without limitation, the intended commercial impression created by the building design in Applicant's Mark.

Interrogatory No. 4

Identify any trademark searches or other searches, opinions, investigations, analyses or studies related to the selection, design, and/or adoption of Applicant's Mark, including, without limitation, the persons involved, the date(s), and the data or results of those searches, opinions, investigations, analyses or studies.

Interrogatory No. 5

State whether Applicant (or any person or entity authorized by Applicant) has made any use of any marks comprising or containing Applicant's Mark in the United States or in commerce as of the present date, and if so, identify each product or service on or in connection with which Applicant (or any person or entity authorized by Applicant) has made such use (hereinafter "Applicant's Products/Services").

Interrogatory No. 6

For each of Applicant's Products/Services identified in response to Interrogatory No. 5 above, identify:

- (a) The date of first use for each of Applicant's Products/Services;
- (b) The period of time during which each of Applicant's Products/Services was or is being distributed, offered for sale, sold or rendered;
- (c) The geographic area(s) in which each of Applicant's Products/Services was or is being distributed, offered for sale, sold or rendered;
- (d) The annual volume of sales for each year to the present, both by dollar amount and unit amount, for each of Applicant's Products/Services;
- (e) Any other revenues, including, without limitation, any licensing or sponsorship revenues that Applicant has received in connection with each of Applicant's Products/Services;
- (f) The range of retail and wholesale price for each of Applicant's Products/Services for each year to the present;
- (g) The channels of trade (e.g., types of retail stores, catalogs, mail order, on-line, promotional sales, private sales, establishments, etc.) through which each of Applicant's Products/Services was or is being distributed or sold to the ultimate purchaser, consumer or user; and
- (h) The type of customers to whom each of Applicant's Products/Services is or was marketed, distributed, offered for sale, sold or rendered.

Interrogatory No. 7

State whether any mark comprising or containing Applicant's Mark has been used or is intended to be used in connection with any indicia, designs, stylizations, terms, imagery, marks, logos, themes, or references similar to, related to, or associated or affiliated with Opposer, and if so describe the details of each such use or intended use.

Interrogatory No. 8

Identify any persons or entities that have ever, either orally or in writing, authorized, licensed, assigned, granted, conveyed or otherwise transferred to Applicant the right to use any mark comprising or containing Applicant's Mark, and for each such person or entity, identify the date of and material terms under which such authorization, license, assignment, grant, conveyance or other transfer was made, including, without limitation, the details of the grant of rights to use Applicant's Mark and the financial terms governing such transaction.

Interrogatory No. 9

Identify any persons or entities Applicant has authorized, licensed, assigned, granted, conveyed or otherwise transferred the right to use any mark comprising or containing Applicant's Mark, and for each such person or entity, identify the date of and material terms under which such authorization, license, assignment, grant, conveyance or other transfer of right to use was made, including, without limitation, the details of the grant of rights to use Applicant's Mark and the financial terms governing such transaction.

Interrogatory No. 10

Identify each website, web auction, web hosting, web listing, web posting, web page or social media page, whether owned by Applicant or third parties, including its Internet address, on or through which Applicant's Mark and/or Applicant's Products/Services have been, are

currently being or are intended to be promoted, advertised, displayed, offered for sale, sold or otherwise distributed.

Interrogatory No. 11

(a) Identify each kind of advertising, marketing and other promotional materials, including, without limitation, point-of-sale material, signs, circular, flyer, poster, sticker, sales sheet, leaflet, brochure, catalog, sign, price list, on-line or email advertisement, print advertisement, radio or television advertisement, service order list or other advertising material or promotional item that has been used or is intended to be used in connection with Applicant's Products/Services and/or Applicant's Mark.

(b) For each promotional material referred to in subparagraph (a) above, identify where the promotional material is advertised, posted, promoted, published or distributed (e.g. name the publication, the URL for the website, the retail store, etc.).

Interrogatory No. 12

(a) Describe each instance where any person has by word or deed or otherwise, including, without limitation, by misdirected mail, e-mail, telephone calls, orders or inquiries, suggested or reflected a belief that Applicant is licensed, endorsed or sponsored by or is a sponsor of Opposer, or that the products or services sold, offered for sale, or otherwise distributed or intended to be sold, offered for sale, or otherwise distributed by Applicant under Applicant's Mark are licensed, endorsed or sponsored by or associated with or related in any way to Opposer, and/or Opposer's Empire State Building Marks; and

(b) Identify all persons knowledgeable about any such instances referred to in subparagraph (a) above and describe the nature of their knowledge.

Interrogatory No. 13

State whether Applicant has marketed or intends to market Applicant's Products/Services bearing or rendered in connection with Applicant's Mark or is aware that such products will be marketed to consumers of Opposer's goods or services, or to consumers located in or around New York, New York and, if so, describe the means by which Applicant has marketed or intends to market Applicant's Products/Services or how such products will be marketed, to consumers of Opposer's goods or services, or to consumers located in or around New York, New York.

Interrogatory No. 14

State whether Applicant was aware of Opposer, Opposer's Empire State Building Marks, and/or goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by Opposer or under license from Opposer in connection with Opposer's Empire State Building Marks prior to:

- a) January 8, 2011, when Applicant filed Application Serial No. 85/213,453.
- b) Any use by Applicant of Applicant's Mark in connection with any goods or services.

Interrogatory No. 15

State whether Applicant has ever sought a license or other right to use any marks, logos, designs, stylizations or slogans, including without limitation, Opposer's Empire State Building Marks, from Opposer.

Interrogatory No. 16

State whether Applicant has any documentation, including without limitation, business plans, marketing plans, memos, correspondence or draft proposals of any kind, reflecting Applicant's bona fide intention, prior to or as of January 8, 2011, to use Applicant's Mark in commerce in connection with each and every good identified in International Class 32 in Application Serial No. 85/213,453.

Interrogatory No. 17

With respect to each response to Opposer's First Set of Requests for Admissions that is anything other than an unqualified admission, state the basis for the response, including, without limitation, all facts and documents upon which the response is based.

DOCUMENT REQUESTS

Request No. 1

Specimens of each of Applicant's Products/Services bearing or displaying any mark comprising or containing Applicant's Mark, including, without limitation, each different color combination and each different product design or stylization of products in which Applicant's Mark is used or intended to be used by Applicant and/or its licensees, sponsors or related or affiliated entities.

Request No. 2

Specimens of each label, hangtag, tag, product package, package insert, sticker, hologram, package material or other device which bears any mark comprising or containing Applicant's Mark, and which has been used or is intended to be used by Applicant and/or its licensees.

Request No. 3

Specimens of each point-of-sale material, circular, flyer, poster, sticker, sales sheet, leaflet, brochure, catalog, sign, price list, on-line or email advertisement, print advertisement, radio or television advertisement, service order list or other advertising material or promotional item which bears any mark comprising or containing Applicant's Mark, and which has been used or is intended to be used by Applicant and/or its licensees.

Request No. 4

All documents concerning Applicant's design, clearance, selection, and/or adoption of Applicant's Mark.

Request No. 5

All documents concerning any trademark searches or other searches, opinions, investigations, analyses or studies conducted or reviewed by or on behalf of Applicant concerning Applicant's Mark.

Request No. 6

Documents sufficient to identify: (a) the date of first use of Applicant's Mark; (b) the date of first use of Applicant's Mark in commerce; (c) the geographic area(s) of use of Applicant's Mark; (d) any and all customers, distributors or other persons or entities to which Applicant's Products/Services offered in connection with Applicant's Mark have been sold or distributed; (e) Applicant's Products/Services bearing, offered for sale, sold or otherwise distributed under Applicant's Mark; (f) all retail, wholesale, commercial, or charitable entities through which goods or services bearing or rendered in connection with Applicant's Mark have been offered for sale, sold or otherwise distributed; (g) the channels of trade through which Applicant's Products/Services offered in connection with Applicant's Mark were or are being distributed or sold to the ultimate purchaser, consumer or user; (h) the annual volume of sales (in dollars and units) made under Applicant's Mark for each year from the date of first use to the present; and (i) the annual amount of revenue, including, without limitation, any licensing or sponsorship revenues that Applicant has received in connection with Applicant's Products/Services offered in connection with Applicant's Mark, for each year from the date of first use to the present.

Request No. 7

All documents concerning the advertising, marketing or promotion of Applicant's Products/Services offered for sale or otherwise distributed or intended to be offered for sale or otherwise distributed under Applicant's Mark, including, without limitation, any media plans, public relations materials, press kits and correspondence with advertising agencies, public relations firms, media planners, graphic designers, web site designers or any other such entities in the advertising and promotional field.

Request No. 8

Documents sufficient to identify the amount of money expended by Applicant in advertising and promoting Applicant's Mark and/or Applicant's Products/Services.

Request No. 9

All documents concerning each trade show, convention, exposition or conference at which Applicant's Products/Services bearing Applicant's Mark have been displayed, advertised, promoted, offered for sale or sold.

Request No. 10

All documents concerning any authorization, license, assignment, grant, conveyance or other transfer of the right to use (or proposed authorization, license, assignment, grant, conveyance or other transfer of the right to use) Applicant's Mark from any third party to Applicant, or to sell Applicant's Products/Services bearing Applicant's Mark.

Request No. 11

All documents concerning any authorization, license, assignment, grant, conveyance or other transfer of the right to use (or proposed authorization, license, assignment, grant,

conveyance or other transfer of the right to use) any of Opposer's Empire State Building Marks from Opposer to Applicant.

Request No. 12

All documents concerning Applicant's authorization, license, assignment, grant, conveyance or other transfer of rights (or proposed authorization, license, assignment, grant, conveyance or other transfer of rights) in Applicant's Mark from or on behalf of Applicant to any third party, including, but not limited to, all license agreements.

Request No. 13

Documents sufficient to identify each website, web auction, web hosting, web listing, web posting, web page or social media page (whether owned by Applicant or third parties), including its Internet address, on or through which Applicant's Mark and/or Applicant's Products/Services has been, is currently being or is intended to be promoted, advertised, displayed, offered for sale, sold or otherwise distributed.

Request No. 14

All documents concerning the use or intended use of Applicant's Mark in connection with any indicia, designs, stylizations, terms, imagery, marks, logos, themes, or references similar to, related to, or associated or affiliated with Opposer, or its trademarks, logos, designs, or stylizations, including without limitation, Opposer's Empire State Building Marks.

Request No. 15

Apart from the current opposition, all documents concerning any objections, claims, demands or actions lodged or filed against the use or proposed use or registration of Applicant's Mark, including, without limitation, cease and desist letters, complaints and/or Notices of Opposition.

Request No. 16

All documents concerning Opposer, Opposer's Empire State Building Marks, or any goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by Opposer.

Request No. 17

All documents concerning Applicant's knowledge of Opposer, Opposer's Empire State Building Marks, and/or any goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by Opposer or under license from Opposer in connection with Opposer's Empire State Building Marks prior to:

- a) January 8, 2011, when Applicant filed Application Serial No. 85/213,453.
- b) Any use by Applicant of Applicant's Mark in connection with any goods or services.

Request No. 18

All documents concerning any market research, focus groups, surveys or other investigation made or commissioned by or on behalf of Applicant concerning Applicant's Mark, Applicant's Products/Services, Opposer's Empire State Building Marks or any goods or services advertised, promoted, offered for sale, sold, licensed or rendered by Opposer.

Request No. 19

All documents reflecting or indicating any confusion on the part of any member of the public between Opposer and Applicant and/or their respective marks and/or goods or services, including, without limitation, documents referring to or evidencing misdirected mail, e-mails, telephone calls, orders or inquiries suggesting or reflecting a belief by any person that Applicant is licensed, endorsed or sponsored by, or is a sponsor of Opposer, or that the products or services sold, offered for sale or otherwise distributed, or intended to be sold, offered for sale or

otherwise distributed, by Applicant under Applicant's Mark are licensed, endorsed or sponsored by or associated or related in any way with or to Opposer, and/or Opposer's goods and services.

Request No. 20

All documents concerning the actual or intended channels of trade for goods or services sold or rendered or intended to be sold or rendered in connection with Applicant's Mark.

Request No. 21

All documents concerning any designs, logos, renditions, stylizations, (including, without limitation, font styles) or formats of or for Applicant's Mark, including without limitation any drafts or proposed versions of same.

Request No. 22

All documents, including without limitation, business plans, marketing plans, memos, correspondence or draft proposals of any kind, concerning Applicant's bona fide intent to use Applicant's Mark. in connection with each and every good identified in International Class 32 in Application Serial No. 85/213,453 prior to or as of January 8, 2011.

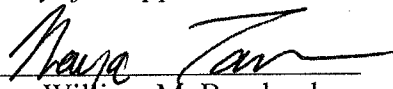
Request No. 23

All documents identified or otherwise referred to by Applicant in answering Opposer's First Set of Interrogatories above and Opposer's First Set of Requests for Admission.

Dated: New York, New York
February 19, 2013

Respectfully submitted,

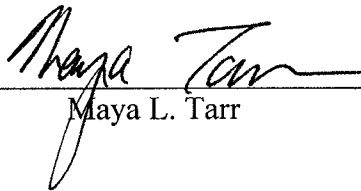
COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: 
William M. Borchard
Mary L. Kevlin
Maya L. Tarr
1133 Avenue of the Americas
New York, New York 10036
212-790-9200

CERTIFICATE OF SERVICE

I hereby certify that, on February 19, 2013, I caused a true and complete copy of the foregoing *Opposer's First Set of Interrogatories and Request for Production of Documents and Things to Applicant* to be served by First Class Mail to Applicant's Attorney and Correspondent of Record, David Yan, Law Offices of David Yan, 136-20 38th Avenue, Suite 11E, Flushing, New York 11354 4232, United States.

Dated: New York, New York
February 19, 2013



Maya L. Tarr

EXHIBIT C

Tarr, Maya

From: Borchard, William M.
Sent: Thursday, March 21, 2013 12:45 PM
To: 'David Yan'
Cc: Kevlin, Mary; Tarr, Maya
Subject: NYC BEER Logo Opposition No. 91204122 (CLL Ref. 22890.013)

FOR SETTLEMENT PURPOSES ONLY -- FRE 408

Dear David,

You telephoned me on March 19, 2013 to request an extension of the Applicant's deadline to respond to Opposer's First Set of discovery requests.

We had a very brief phone conversation about fifteen minutes later, but you had to go so we did not finish our conversation. I called you again yesterday, but you were not available.

1. Extension Request

Regarding your extension request, Opposer will consent to a 60 day extension of Applicant's deadline to respond to Opposer's First Set of discovery requests on condition that all other dates are extended for 90 days. This will give us an opportunity to continue to explore settlement and will avoid putting Applicant and Opposer under undo time pressure should settlement not be possible.

Please let me know whether or not this is acceptable. If so, we will prepare and submit the Motion on Consent to the TTAB.

2. Settlement

I look forward to hearing from you.

Bill

William M. Borchard, Esq.

Cowan, Liebowitz & Latman, P.C.

1133 Avenue of the Americas

New York, New York 10036

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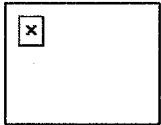


EXHIBIT D

Tarr, Maya

From: Borchard, William M.
Sent: Tuesday, March 26, 2013 3:38 PM
To: 'David Yan'
Cc: Kevlin, Mary; Tarr, Maya
Subject: NYC BEER Logo Opposition No. 91204122 (CLL Ref. 22890.013)

Dear David,

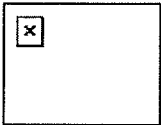
Since I have not heard from you in reply to my email of March 21, 2013, I believe that you have accepted our client's consent to a 60 day extension of Applicant's deadline to respond to Opposer's First Set of discovery requests on condition that all other dates are extended for 90 days.

We will prepare and submit the Motion on Consent tomorrow if we do not hear otherwise from you.

We also look forward to hearing from you about the settlement proposal we made in that email.

Bill

William M. Borchard, Esq.
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the Americas
New York, New York 10036
t: (212) 790-9290 | f: (212) 575-0671
www.cll.com | wmb@ccll.com | [My Profile](#)



From: Borchard, William M.
Sent: Thursday, March 21, 2013 12:45 PM
To: 'David Yan'
Cc: Kevlin, Mary; Tarr, Maya
Subject: NYC BEER Logo Opposition No. 91204122 (CLL Ref. 22890.013)

FOR SETTLEMENT PURPOSES ONLY -- FRE 408

Dear David,

You telephoned me on March 19, 2013 to request an extension of the Applicant's deadline to respond to Opposer's First Set of discovery requests.

We had a very brief phone conversation about fifteen minutes later, but you had to go so we did not finish our conversation. I called you again yesterday, but you were not available.

1. Extension Request

Regarding your extension request, Opposer will consent to a 60 day extension of Applicant's deadline to respond to Opposer's First Set of discovery requests on condition that all other dates are extended for 90 days.

This will give us an opportunity to continue to explore settlement and will avoid putting Applicant and Opposer under undo time pressure should settlement not be possible.

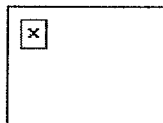
Please let me know whether or not this is acceptable. If so, we will prepare and submit the Motion on Consent to the TTAB.

2. Settlement

I look forward to hearing from you.

Bill

William M. Borchard, Esq.
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COMPOSITE EXHIBIT E

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding.	91204122
Applicant	Plaintiff Empire State Building Company L.L.C.
Other Party	Defendant Michael Liang

**Motion for an Extension of Answer or Discovery or Trial Periods With
Consent**

The Close of Plaintiff's Trial Period is currently set to close on 05/17/2013. Empire State Building Company L.L.C. requests that such date be extended for 90 days, or until 08/15/2013, and that all subsequent dates be reset accordingly.

Time to Answer :	CLOSED
Deadline for Discovery Conference :	CLOSED
Discovery Opens :	CLOSED
Initial Disclosures Due :	CLOSED
Expert Disclosure Due :	CLOSED
Discovery Closes :	CLOSED
Plaintiff's Pretrial Disclosures :	07/01/2013
Plaintiff's 30-day Trial Period Ends :	08/15/2013
Defendant's Pretrial Disclosures :	08/30/2013
Defendant's 30-day Trial Period Ends :	10/14/2013
Plaintiff's Rebuttal Disclosures :	10/29/2013
Plaintiff's 15-day Rebuttal Period Ends :	11/28/2013

The grounds for this request are as follows:

- *Parties are engaged in settlement discussions*
- *Opposer has consented to a 60 day extension of Applicant's deadline to respond to Opposer's First Set of discovery requests, until May 25, 2013. Opposer also requests, upon consent from Applicant, that all other dates be extended for an additional 90 days.*

Empire State Building Company L.L.C. has secured the express consent of all other parties to this proceeding for the extension and resetting of dates requested herein.

Empire State Building Company L.L.C. has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Respectfully submitted,

/Maya L. Tarr/

Maya L. Tarr

mxt@cil.com, wmb@cil.com, trademark@cil.com, fxm@cil.com, mlk@cil.com
davidyanlawfirm@yahoo.com

03/27/2013

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

March 27, 2013

PROCEEDING NO. 91204122
Empire State Building Company
L.L.C.

v.

Michael Liang

MOTION TO EXTEND GRANTED

By the Board:

Empire State Building Company L.L.C.'s consent motion to extend, filed Mar 27, 2013, is granted. Dates are reset as set out in the motion.

.oOo.

EXHIBIT F

Tarr, Maya

From: Borchard, William M.
Sent: Monday, June 03, 2013 11:29 AM
To: 'David Yan'
Cc: Kevlin, Mary; Tarr, Maya; Mantovani, Fran
Subject: Empire State Building Company L.L.C. v. Michael Liang (NYC BEER Logo) Opposition No. 91204122 (CLL Ref. 22690.013)

Dear David,

I tried to reach you by telephone this morning and left a message that I had called with the person who answered the telephone.

We have not received your client's responses to our discovery requests, and believe you did not send them by the extended deadline of May 25, 2013. Accordingly, your client has waived any objections he might have had to our Interrogatories, Document Requests or Requests for Admissions, and the Admissions are deemed admitted.

If we do not hear from you by Wednesday, June 5th by 5:00 p.m., we will need to file a Motion to Compel as we will be pushing up against our client's deadlines.

William M. Borchard, Esq.
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